IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1306 OF 2005

IN

SUIT NO.1181 OF 2005

USV Limited. ...Plaintiff

Vs.

M.D.C.Pharmaceuticals(P) Ltd. ...Defendant.

Mr.Ashish Kamat i/b. Bharat Shah & Co., for Plaintiff.

None for Defendant.

CORAM: D.K.DESHMUKH,J.

DATED: 24th August, 2006.

P.C.:-

1. This is a notice of motion taken out by the plaintiff. The plaintiff has filed the suit claiming permanent injunction restraining the defendant from using the Trade Mark “CARTIMAX” because according to the plaintiff the mark of the defendant i.e. "CARTIMAX" is deceptively similar to the registered trade mark of the plaintiff

"CARDIMAX". The plaintiff has filed the suit alleging infringement of the registered mark as also on the basis of passing of. It appears from the averments in the plaint that the defendant has not marketed any product under the trade mark "CARTIMAX". According to the plaintiff, the defendant has infringed the registered trade mark of the plaintiff because the defendant has made an application to the Registrar of the Trade Marks for registration of its mark namely "CARTIMAX" and the plaintiff has come across something in a medical journal "Drug Today" showing that the defendant's preparation under the trade mark "CARTIMAX" is listed. In my opinion, merely making an application for the registration of a mark with the Registrar of Trade Marks though the mark may be deceptively similar to the trade mark which is already registered, will not amount to infringement of the trade mark.

2. So far as the publication “Drug Today” is concerned, firstly there is no advertisement published. Even according to the averments in the plaint in the medical journal “Drug Today” the defendant's preparation bearing the impugned trade mark “CARTIMAX” is listed. However, no particulars are given of the Journal, place from where it is published, whether it is available to the members of the public easily, what is the circulation of that journal. Nothing is averred in the plaint in that regard. What is pertinent to note here is that though the plaintiff claims that its trade mark is infringed by the defendant

because of making an application for registration of its mark "CARTIMAX" and because the product of the defendant is listed in a journal, the plaintiff is not claiming any permanent injunction even a temporary injunction either in relation to the application made by defendant nor in relation to the publication in the alleged medical journal. It is clear that the defendant has not marketed any product under the trade mark "CARTIMAX" therefore, there is no question of any member of public being misled by the alleged similarity in the two trade marks. In my opinion, the plaintiff has not made out any prima face case to show that the registered trade mark of the plaintiff is infringed or that the defendant is passing of any goods under the said trade mark as that of plaintiff. The plaintiff is therefore, not entitled to any interim relief. The Notice of Motion is therefore, disposed of.

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